BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JOHN J. ULLMER	)	
Claimant	)	
V.	)	
	)	
ARMOUR ECKRICH MEATS, LLC	)	Docket No. 1,075,935
Respondent	)	
AND	)	
	)	
SAFETY NATIONAL CASUALTY CORP.	)	
Insurance Carrier	)	

ORDER

Claimant, through Jeff K. Cooper, requests review of Administrative Law Judge Rebecca Sanders' June 30, 2016 preliminary hearing Order. Dallas L. Rakestraw and Travis L. Cook appeared for respondent and insurance carrier (respondent).

The record on appeal is the same as that considered by the judge and consists of the May 3, 2016 preliminary hearing transcript and exhibits thereto, the May 13, 2016 deposition of Todd Frieze, M.D., and exhibits thereto, and the May 25, 2016 deposition of Willie Brown, in addition to all pleadings contained in the administrative file.

ISSUES

On December 8, 2015, claimant filed an application for hearing alleging injuries to his low back, hips, lower extremities, hands and upper extremities by repetitive trauma.[1] The judge found claimant's date of accident[2] was March 2, 2015, when his primary care physician diagnosed left shoulder overuse tendonitis and provided temporary restrictions. The judge denied benefits after finding claimant was not credible and he failed to prove he provided timely notice.

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[1] Claimant's attorney told the judge his client was alleging injury to his left shoulder, low back and upper extremities, but not his legs unless they were related to claimant's back. (P.H. Trans. at 4-5.)

[2] References in the administrative file to an "accident" should refer to "injury by repetitive trauma." The May 15, 2011 amendments to the Kansas Workers Compensation Act differentiate injury by accident and injury by repetitive trauma.

Claimant appeals and argues his date of injury by repetitive trauma was January 29, 2016, when he was told by a physician hired by his attorney that his injuries were work related. He thereby contends he had already provided timely notice to respondent some time in 2014 regarding his hands and some time in 2016 regarding his left shoulder. Claimant asserts his primary care physician's diagnosis of overuse tendonitis was never communicated to him and he thought the restrictions provided on such date were for his overall medical conditions, not for a diagnosed repetitive trauma. Further, claimant asserts: (1) he would only need to give notice when he had what clearly constituted a compensable work injury and (2) he did not need to give notice because his primary care physician never diagnosed what the doctor considered to be a work injury.

Respondent maintains the Order should be affirmed. Respondent argues claimant's notice was untimely because the proper date of injury by repetitive trauma was March 2, 2015. Respondent asserts claimant never provided timely notice based on a supervisor's denial of the same. Further, the supervisor stopped being claimant's superior in late 2012 or early 2013 and they did not work on the same shift.

The issues are:

1. What is claimant's date of injury by repetitive trauma?

2. Did claimant prove timely notice of his asserted injury by repetitive trauma?

FINDINGS OF FACT

Claimant began working for respondent in 2009. He works as a "sticker," a job he has held throughout most of his employment with respondent. According to claimant, he lifts sticks containing 50-75 pounds of sausage links with his left arm and hooks the sausage on a chain above his head. Claimant testified he lifts 1,100 to 1,200 sticks during a 12-hour shift and works 48 to 70 hours per week.

In October 2014, claimant started noticing gradually-developing problems in his left shoulder, hands and low back, which he believed were related to his repetitive work. Claimant testified he reported the problems in his hands "one time" in 2014 to Willie Brown, a supervisor, and in 2016 "mentioned" to Mr. Brown the problems in his left shoulder, including that he could not lift his shoulder too high, but never said anything about his back.[3] Claimant did not know when this shoulder discussion occurred in 2016. He did not request medical treatment and he did not fill out an accident report.

[3] P.H. Trans. at 11-12, see also p. 28.

Brown has worked for respondent for 15 years as a production supervisor and was claimant's direct supervisor on second shift until late 2012 or early 2013. Brown subsequently worked on first shift, but claimant remained on second shift. Brown testified claimant never reported an injury to him and it was not until he was notified by respondent's human resources department that he became aware claimant was alleging a workplace injury. Brown testified had claimant reported an injury or complained of an injury, he would have been required to complete an accident/incident report form, lest Brown risk job discipline, including potential termination of employment.

Brown acknowledged claimant's job was physical and required repetitive lifting. Brown never had any complaints about claimant's job performance or attendance. Brown disagreed with claimant's description of the weight of the sausage and estimated the heaviest product was no more than 35 to 40 pounds.

Todd Frieze, M.D., has been claimant's primary care physician since April 2012. Dr. Frieze treated claimant for a number of personal health conditions, including diabetes, sleep apnea and being overweight.[4]

On November 18, 2013, claimant told Dr. Frieze he had to lift 40 pounds of sausage at a time and the repetitive activity was "wearing him out and causing some chronic chest wall pain."[5] Claimant told Dr. Frieze he asked for changes in his shift and job description because it was getting difficult to lift the heavier weights. The doctor diagnosed claimant with acute musculoskeletal chest wall pain and limited claimant's lifting, pulling and pushing to 10 pounds for two weeks.

Claimant saw Dr. Frieze on December 3, 2013, and reported respondent put him on leave because he could not do his normal job functions. Dr. Frieze noted claimant's chest wall pain had resolved and he could return to work without restrictions.

On June 6, 2014, claimant saw Dr. Frieze and complained of intermittent parasthesias in both hands with increased symptomatology on days he worked. Dr. Frieze suspected some mild underlying carpal tunnel type symptoms and recommended nighttime use of wrist splints. Dr. Frieze testified he did not advise claimant his numbness was due to his work. The doctor indicated that if claimant had given him even the slightest impression he had a work injury, he or his staff would have advised claimant to go to his employer's workers compensation medical provider. Dr. Frieze testified claimant never completed any paperwork indicating he had any work-related problems or conditions.

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[4] This Board Member prefers to avoid needless references to a worker's unrelated health concerns. However, claimant testified to his belief that specific health issues, such as diabetes and sleep apnea, and his generalized health concerns, led Dr. Frieze to issue work restrictions.

[5] Frieze Depo., Ex. 1 at 18.

Claimant went to Geary Community Hospital on August 23, 2014, and reported fatigue from working 70 hours a week. He complained of sore muscles in his arms, left knee and left hip due to his work. Claimant was told to follow-up with Dr. Frieze.

On August 25, 2014, claimant returned to Dr. Frieze complaining of generalized fatigue/tiredness and obstructive sleep apnea, in addition to low back, hip and knee pain which improved when he was not working. Claimant reported working 70 hours a week, performing lots of lifting, twisting and hanging, caused his knees, hips and back to hurt.

Claimant requested restrictions limiting his work to 40 hours a week. Among various diagnoses, Dr. Frieze listed degenerative osteoarthritis in his report. Dr. Frieze prescribed anti-inflammatory medication and provided claimant a 40-hour work restriction. Claimant testified he thought the work restriction was because of his many medical problems, which included his back, hip and knee. Claimant testified he believed he told the doctor that working 70 hours a week caused him to hurt, but further noted the doctor only told him he had degenerative arthritis, not that his work was the cause. Claimant also acknowledged he and Dr. Frieze had a long discussion about claimant possibly needing to change employment based on his limitations.

Dr. Frieze testified he provided the 40-hour limitation because claimant asked for it and he was "worn out," not because he thought claimant had a work-related condition.[6] The doctor testified he did not specifically advise claimant his knee, hip and back pain were due to his work.

On October 24, 2014, claimant saw Dr. Frieze and reported persistent low back and left hip pain for a couple of months. Claimant noted he felt increased pain after getting off work. Dr. Frieze diagnosed claimant with subacute low back pain and probable degenerative osteoarthritis. Dr. Frieze testified he did not advise claimant these complaints were work related.

At claimant's January 19, 2015 examination with Dr. Frieze, the doctor diagnosed him with, among other things, degenerative arthritis of the lumbar spine.

On March 2, 2015, claimant returned to Dr. Frieze complaining of chronic low back pain and knee pain. The doctor's report noted he suspected claimant had underlying degenerative osteoarthritis. Dr. Frieze's note stated:

> The patient reports he has to do quite a bit of lifting and hanging sausage at his work. He has repetitive activities where he is lifting things above his head. He complains of some pain involving his left lateral shoulder. He reports it has been bothering him quite a bit more the last three weeks. He reports he mentioned this

[6] *Id*. at 15.

> to his supervisors. He reports without a note from a physician he has to continue to do the same amount of work. I asked him if there are other job opportunities available where he wouldn't have to do quite as much lifting and he reports that that is a possibility. I suspect some of this is related to repetitive overuse.[7]

Dr. Frieze's impression was: (1) chronic left knee pain that he suspected was related to underlying degenerative osteoarthritis and (2) left shoulder pain likely related to overuse tendonitis. Dr. Frieze testified he suspected claimant had overuse tendonitis and provided temporary work restrictions of lifting, pushing and pulling no more than 10 pounds for the next couple weeks.

When questioned whether he advised claimant that his shoulder condition was work related, Dr. Frieze testified:

> A. I think I alluded that that is - - I just - - I guess what I would say, I alluded to the fact if he's doing that certain type of activity and his shoulder's hurting, I feel like it's probably overuse to what he was doing, yeah.
>
> Q. But I mean, did you tell him that?
>
> A. That it was?
>
> Q. That the shoulder use is due to his work - - the overuse - - the shoulder problem, the left shoulder could be overuse tendonitis due to his work; did you tell him that?
>
> A. I don't know if I specifically put it exactly like that. But I think I sort of did tell him that when I said, you probably better find something else at work to do, and then - - you know what I mean.
>
> Q. I mean, what I'm curious to know is, basically, did he - - did you want him to understand through your conversation that you felt like this was due to his work, the overuse tendonitis?
>
> A. I felt like from based on our conversation that he should - - yes, I felt like if he continued to do that, it might continue to bother him, and that probably he should find some other type of - - if there's something he could do, or we could limit the time he does that, or something.
>
> Q. And did you tell him that?
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> A. Maybe I didn't tell him that exactly 100 percent the way you phrased it. Do you understand that? Because I guess my take on it would be that on this shoulder issue, if he continues to do those same type of things, we don't back off,

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[7] *Id*., Ex. 1 at 6.

it may continue to be a problem. If I said - - if I would have thought, oh, my gosh, this is some longstanding workman's comp issue, I would have at that time advised him you need to, you know what I mean, you need to go see the workman's comp people, or if you think this is related to that.

. . .

A. I guess what I would say is, if you look at my impression and plan, and I don't have - - I don't actually have a photographic memory of that date. But in my impression plan, I said he had a three week history of left shoulder pain. I suspect some of this is related to overuse tendonitis. And I recommend that he modify that particular - - I mean, I said I recommend modification of his activity. So, and we limited his activity so he wouldn't have to do, you know, some activities that might aggravate that.

So, although I didn't advise him that you need to go file some type, or notify, or file some type of workers' compensation thing, I think it was implicit in my discussion with him that I think this activity is bothering your shoulder, and I think if we modify that activity and we don't let you lift, push, or pull, I think this will, you know, probably calm down. I mean, that's not exactly - - but I think that's kind of implied here.

Q. Okay, I understand. Did you tell him that you felt like the activity he was engaging in was causing his shoulder pain?

A. I would say that I felt like - - yeah, I guess I would answer this, it says that I think that the activity that when he came in complaining of left shoulder pain, I believe - - I believe that this activity he was engaged in at that time contributed to his - - to him coming and seeing me for left shoulder pain.

Q. Okay. And you assigned temporary work restriction[s]?

A. Yes.

Q. Were the temporary work restrictions to help with the modification?

A. Yes.

Q. Okay. So were the temporary work restrictions in response to the overuse tendonitis?

A. Yes, I would say so.[8]

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[8] *Id*. at 22-24, 26-27; see also pp. 46-47.

Dr. Frieze testified he did not tell claimant at the March 2, 2015 visit that he had a work-related injury. The doctor stated the restrictions provided concerned all of claimant's activities, whether at work or at home. Dr. Frieze testified he suspected claimant had underlying arthritis, but claimant's repetitive activity of lifting and hanging sausages at work caused inflammation of one of his left shoulder tendons. Claimant testified Dr. Frieze only told him that he had degenerative arthritis. Claimant indicated he was unaware of the left shoulder overuse tendonitis diagnosis.[9] Claimant stated Dr. Frieze took him off work in March 2015 due to diabetes and denied that the doctor ever told him he needed to be off work because of his shoulders, hands or back.

Claimant went to AlphaCare on March 18, 2015. He complained of muscle spasms and soreness on his right side. Claimant advised a doctor (likely Dr. Frieze) gave him light duty two weeks earlier, apparently due to "overwork." He felt better away from work, but reported that he returned to work on March 16, 2015, and his pain returned. Claimant could not relate a specific injury or event. AlphaCare diagnosed claimant with myalgia, prescribed cyclobenzaprine, suggested ice and heat, and further told claimant to follow-up with his primary care physician.

On March 27, 2015, claimant returned to Dr. Frieze and reported improvement in his left shoulder pain after being off work for 10 days. Dr. Frieze released claimant to return to work with no restrictions. The doctor testified claimant's left shoulder tendonitis was transient, like a hobo, and went away.

On August 24, 2015, claimant saw Dr. Frieze and complained of his "usual aches and pains related to degenerative osteoarthritis" and "shakiness" in his arms at work while hanging sausages for 12 hours the other day. Claimant noted the symptoms went away while he was off work over the weekend. Claimant asked Dr. Frieze to limit his work to 8 hours a day. Dr. Frieze's report stated:

> We will try to restrict his work hours to no more than 8 hours a day. We had a long discussion regarding his current employment. For as long as I have been seeing him, he has a lot of work related issues. He always feels like he needs reduced hours. I told him it might be appropriate for him to look for another type of employment.[10]

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[9] The preliminary hearing transcript uses the typographical error "tinnitus" in place of "tendonitis." P.H. Trans. at 23.

[10] Frieze Depo., Ex. 1 at 10.

Dr. Frieze wrote claimant a note stating, "The above patient is needing 8 hour work days for 1 month for chronic pain issues."[11] The doctor testified he told claimant that if his job was too stressful, causing him fatigue, wearing him out or required too many hours, he might want to look for another job. The hours limit was based on claimant's overall problems, including his fatigue and diabetes, according to the doctor's testimony.

Dr. Frieze testified he never told, or did "[n]ot specifically" tell, claimant he was having work-related problems that needed to be handled under workers compensation.[12] The doctor testified he never saw evidence of a permanent change in claimant's physical condition that he considered to be an injury for workers compensation purposes.

Claimant testified Dr. Frieze told him degenerative arthritis was causing his symptoms. Claimant denied that the doctor ever said he was diagnosing him with a work-related repetitive trauma injury. Claimant believed he was given work restrictions because of his medical problems, such as diabetes and sleep apnea, and Dr. Frieze was trying to help him get on disability. Dr. Frieze testified he tries to explain medical conditions as simply as possible, especially with medically unsophisticated people such as claimant, who testified he believed he completed the eighth grade.

At the request of his attorney, claimant saw Edward Prostic, M.D., on January 29, 2016. Claimant complained of hip and low back pain which worsened with repetitiously lifting 30-50 pound loads of sausage at work, left shoulder pain and numbness to the long fingers in each hand.

Dr. Prostic assessed claimant with a likely SLAP tear of his left shoulder with possible rotator cuff injury, bilateral carpal tunnel syndrome and sprain/strain of his low back. Dr. Prostic recommended a left shoulder MRI, a bilateral upper extremity EMG, anti-inflammatory medication and therapeutic exercises. It was Dr. Prostic's opinion claimant's work was the prevailing factor in causing his injuries, medical conditions and need for treatment.

Amy Meusborn, ARNP, examined claimant on February 24, 2016, for various health concerns. Among other things, Nurse Meusborn noted claimant's report of arthritis and pain in his knees, hip and shoulder.

Claimant had a CT scan on March 3, 2016 for right lower quadrant pain and bilateral flank pain. According to Curtis Mick, M.D., the scan showed severe central spinal stenosis.

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[11] *Id*., Ex. 1 at 11.

[12] *Id*. at 39-40.

At the request of respondent, claimant saw Chris Fevurly, M.D., on March 31, 2016. Claimant complained of low back pain, bilateral leg and knee pain, left shoulder pain and numbness in the first three fingers of both hands. Based on the results of his examination, Dr. Fevurly diagnosed claimant with morbid obesity, mild to moderate bilateral carpal tunnel syndrome, severe spinal stenosis in the lumbar spine, mild to moderate bilateral knee degenerative joint disease and diabetes mellitus. In addressing prevailing factor, Dr. Fevurly stated:

> The claimant has a multitude of age-related conditions and congenital conditions which are affecting both his pain and his energy levels:
>
> 1. His morbid obesity is a major contributing factor to his fatigue and the prevailing factor for his development of carpal tunnel syndrome. If the work he performed required high force (which it does not) in combination with high repetition (which it does), then the CTS would be considered work-related His markedly elevated BMI and advancing age have to be considered the prevailing factors for his bilateral CTS.
>
> 2. His morbid obesity is also the major contributing (prevailing) factor for his mild to moderate bilateral knee degenerative arthritis, his chronic lower extremity venous statis/DVT, his sleep apnea (which he has failed to be compliant in treatment via CPAP) and his type II diabetes.
>   a. The development of a DVT and the significant abnormalities (although transient) in his white count and platelet count may signal an occult malignancy as a contributor to his easy fatigability.
>
> 3. The congenital shortening of his pedicles is the prevailing factor for his spinal stenosis but it is unclear how much this may be contributing to his low back pain. There are some symptoms consistent with neurogenic claudication but I am unconvinced that he has much neurogenic compromise from his lumbar spine to his lower extremities.
>
> 4. The repetitive overhead reach with the left arm in his job is the prevailing factor for his left shoulder impingement/rotator cuff tendinopathy and for the possible labral lesion (SLAP lesion) based on physical examination.[13]

Dr. Fevurly imposed work restrictions of occasional above left shoulder reach and no forceful pushing or pulling with the left arm. Dr. Fevurly recommended EMG testing of the upper extremities and possible surgery for the left shoulder.

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[13] P.H. Trans., Resp. Ex. A at 9.

Claimant continues to work his regular job duties, but testified the problems with his left shoulder, hands and back make it difficult for him.

In the June 30, 2016 Order, the judge stated:

> On March 2, 2015, Dr. Frieze diagnosed Claimant with overuse tendonitis in his right [sic] shoulder and restricted Claimant's activity including job duties.
>
> Therefore according to K.S.A. (2011 Supp.) 44-508(e)(2) Claimant's date of accident is March 2, 2015.
>
> . . .
>
> The only evidence is that Claimant gave his employer notice of any accident was to Willie Brown in 2014 and then a year or two later said something to Willie Brown again. The only problem with Claimant's testimony is that Willie Brown stopped being Claimant's supervisor in early 2013. Claimant's testimony about giving his employer notice is simply not credible.
>
> The only evidence of any notice by Claimant is when he filed an application for hearing on December 8, 2015.
>
> That is not timely notice. Claimant's request for workers compensation benefits is denied.

Claimant appealed.

PRINCIPLES OF LAW

K.S.A. 2014 Supp. 44-501b(c) states claimant carries the burden of proving his right to an award of compensation based on the whole record. The burden of proof is based on a "preponderance of the credible evidence" and a "more probably true than not true" standard, as noted in K.S.A. 2014 Supp. 44-508(h).

K.S.A. 2014 Supp. 44-508 states, in part:

> (e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.
>
> In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

(1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;

(2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;

(3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or

(4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

K.S.A. 2014 Supp. 44-520 states:

(a)(1) Proceedings for compensation under the workers compensation act shall not be maintainable unless notice of injury by accident or repetitive trauma is given to the employer by the earliest of the following dates:

(A) 20 calendar days from the date of accident or the date of injury by repetitive trauma;

(B) if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma, 20 calendar days from the date such medical treatment is sought; or

(C) if the employee no longer works for the employer against whom benefits are being sought, 10 calendar days after the employee's last day of actual work for the employer.

Notice may be given orally or in writing.

. . .

(4) The notice, whether provided orally or in writing, shall include the time, date, place, person injured and particulars of such injury. It must be apparent from the content of the notice that the employee is claiming benefits under the workers compensation act or has suffered a work-related injury.

. . .

(c) For the purposes of calculating the notice period proscribed in subsection (a), weekends shall be included.

While Board review of a judge's order is de novo on the record,[14] appellate courts are ill-suited to assessing credibility determinations based in part on a witness' appearance and demeanor in front of the factfinder.[15] The Board often opts to give some deference – although not statutorily mandated – to a judge's findings and conclusions concerning credibility where the judge was able to observe the testimony in person.[16]

ANALYSIS

Determining if timely notice was satisfied necessarily requires determination of the date of injury by repetitive trauma, which in this case was March 2, 2015.

Dr. Frieze is an advocate for claimant, his patient. While Dr. Frieze said he never told claimant he had a work-related condition, the doctor's testimony and the overall evidence leads this Board Member to conclude Dr. Frieze knew claimant's work was causing him injury and he relayed such information to claimant.

As early as November 18, 2013, claimant told Dr. Frieze his repetitive work caused him pain and was wearing him out, which had caused claimant to ask for changes in his shift and his job duties. The doctor provided light duty restrictions. Claimant told Dr. Frieze on August 25, 2014, that "lots of lifting, twisting and hanging" while working 70 hours a week caused him pain and led to claimant asking for a 40-hour work week restriction. The same is true for March 2, 2015, when claimant complained to Dr. Frieze about his repetitive and overhead work in connection with his left shoulder pain. The doctor diagnosed an overuse condition with respect to claimant's left shoulder on March 2, 2015, and gave claimant a 10 pound work restriction. The restriction was due to the diagnosed overuse condition, which in turn was caused by claimant's repetitive overhead work. The doctor even told claimant to look for something else to do at work. Dr. Frieze acknowledged it was implicit in his conversation with claimant that claimant's job duties were "bothering" or contributing to his shoulder pain.

Based on Dr. Frieze's records and testimony, it is difficult to accept claimant's contention that he believed Dr. Frieze's work restrictions were not for the effects of his repetitive work. Moreover, the March 18, 2015 report from AlphaCare contains claimant's history that he was given restrictions two weeks earlier due to being overworked. Simply put, claimant knew the restrictions were due to him being overworked.

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[14] See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

[15] *De La Luz Guzman-Lepe v. National Beef Packing Company*, No. 103,869, 2011 WL 1878130 (Kansas Court of Appeals unpublished opinion filed May 6, 2011).

[16] It is "better practice" for the Board to provide reasons for disagreeing with a judge's credibility determinations. *Rausch v. Sears Roebuck & Co.*, 46 Kan. App. 2d 338, 342, 263 P.3d 194 (2011), *rev. denied* 293 Kan. 1107 (2012).

This Board Member agrees with the judge that on March 2, 2015, Dr. Frieze diagnosed claimant with a repetitive trauma and issued restrictions, making such date claimant's date of injury by repetitive trauma.

Dr. Frieze's testimony that it was his opinion in March 2015 that claimant did not have what he considered to be a work injury does not lead this Board Member to conclude any differently.

As for notice, the judge did not find claimant's testimony to be credible. Claimant and Brown have worked on different shifts subsequent to early 2013. While claimant may have spoken to Brown during a shift change or some other time, the fact they work on different shifts leads this Board Member to put more weight in the judge's conclusion that notice was not provided until claimant filed his application for hearing in December 2015. Additionally, claimant's vague testimony that he gave notice some time in 2014 for his hands and some time in 2016 for his left shoulder is insufficient for the notice requirements of time, date and particulars. The judge's ruling regarding notice is affirmed.

CONCLUSIONS

Claimant's date of injury by repetitive trauma was March 2, 2015. He did not provide notice within 20 days.

WHEREFORE, the Board affirms the June 30, 2016 Order.[17]

IT IS SO ORDERED.

Dated this _____ day of August, 2016.

_____
HONORABLE JOHN F. CARPINELLI
BOARD MEMBER

[17] By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2015 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

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